

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2523 OF 2005

Santosh Hariaum Parekar .. Petitioner
Versus
Meta Fab Enterprises .. Respondents

Ms Hutoxi Tavdia i/b Mahesh M Thorat for petitioner
Mr.Avinash K.Jalisatgi for respondents

CORAM : P.V.KAKADE, J.
DATE : 19TH NOVEMBER, 2005

P.C.:

1. Heard the learned counsel for both the parties.
2. Rule, rule made returnable forthwith by consent.
3. By this writ petition the petitioner challenges the propriety and validity of the impugned order dated 15th April 2005 passed by the Labour Court and further

to quash and set aside the order with direction to the respondents to reinstate the petitioner with continuity of service, full backwages and all consequential benefits w.e.f. 10.6.1997.

4. The Reference Court decided the impugned Reference (IDA) No.579 of 1998 filed by the respondents in which it was held that the termination of services of the workman was not illegal, bad in law and in contravention of the provisions of the Industrial Disputes Act. It was further held that the respondents had proved that the workman had left his job on his own accord and workman therefore was not entitled to the relief of reinstatement and backwages and continuity of service.

5. It was the case of the petitioner-workman that he joined the service on 22.11.1995 as Helper. He was made permanent in service after three months period. He was getting daily wages of Rs.34.50 and was required to work for 12 hours. The company having business of fabrication and employed more than 20 workmen. On 11.2.1999, while on duty, the workman met with an

accident and his hand was fractured. He took the medical treatment in E.S.I. Hospital at Mulund for three months. Thereafter he has resumed on duty and at that time he requested to the Management to give lighter work. But instead of giving lighter work the company terminated his services w.e.f. 10.6.1997. According to the petitioner, no notice or charge-sheet was issued to him in that regard. Further it was submitted that domestic enquiry was not conducted and company had not given retrenchment compensation, notice pay and other dues and hence his termination is said to be illegal.

. The stands of the company was to the effect that the workman joined in the service on 13.11.1996 and not on 22.11.1995. It was further submitted that he was casual worker and his daily wages were Rs.74/= per day. The company has not terminated the services of the workman w.e.f. 10.6.1998, however, he himself remained absent and has not completed 240 days service in a year to become permanent workman and therefore, there is no question arose for giving retrenchment compensation. It is submitted that after remaining absent, the company had displayed the notice on notice board on two

occasions in the presence of witnesses, as the address of the petitioner was not known. Even then the workman did not resume on duty and on such and other grounds the reference was sought to be dismissed. The reference court adjudicated the dispute accordingly on the basis of available evidence and came to the conclusion as aforesaid and rejected the reference. Hence the present Petition.

6. At the outset, it may be noted that on perusal of the order passed by the Labour Court the factual aspects are seen to be properly appreciated and no perversity could be found in the reasoning adopted by the Labour Court while adjudicating the Reference. There is no evidence to show that the workman was permanent worker. The learned counsel for the petitioner submits that the relevant muster roll of the year 1995 was not produced on record and what was produced was that of the year 1996 onwards only and therefore, the worker was unable to prove that he was in service as alleged. However, there is nothing on record to show that the muster roll of the year 1995 was called upon to be produced on behalf of the worker, especially

when he was assisted by the services of the advocate and therefore, there cannot be lie in the mouth of the petitioner that he was illiterate person and was unable to adhere the procedure of law. Consequently the reference appears to be adjudicated in proper and reasonable manner and therefore, it would brook no interference.

. In the result the petition fails and stands dismissed with no order as to costs.